

ORIGINAL

HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
202-955-5564 Fax
www.hklaw.com

EX PARTE OR LATE FILED

ORIGINAL

RECEIVED

AUG 24 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Annapolis	San Antonio
Atlanta	San Francisco
Bethesda	Seattle
Boston	Tallahassee
Bradenton	Tampa
Chicago	Washington, D.C.
Fort Lauderdale	West Palm Beach
Jacksonville	International Offices:
Lakeland	Caracas*
Los Angeles	Helsinki
Miami	Mexico City
New York	Rio de Janeiro
Northern Virginia	São Paulo
Orlando	Tel Aviv*
Portland	Tokyo
Providence	
St. Petersburg	*Representative Office

Marvin Rosenberg
202 457 7147
marvin.rosenberg@hklaw.com

August 24, 2004

VIA HAND DELIVERY

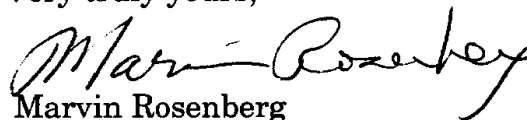
Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex-Parte Presentation
MB Docket No. 03-206

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1)(2) of the Federal Communications Commission's Rules, this to advise that on August 23, 2004 a written ex-parte presentation was made by Dominion Video Satellite, Inc. ("Dominion") to W. Kenneth Ferree, Chief, Media Bureau, and Rosalee Chiara, Public Interest Obligations of Satellite/DBS Licensees, Media Bureau. A copy of the written presentation is submitted herewith.

Very truly yours,


Marvin Rosenberg

1695468_v1

No. of Copies rec'd 0
List ABODE

Holland Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
WA, D.C. 20006-6801
www.hklaw.com

RECEIVED

AUG 24 2004

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

August 23, 2004

Marvin Rosenberg
202 457 7147
marvin.rosenberg@hklaw.com

Kenneth M. Scheibel, Jr.
Investigations and Hearing Division
Enforcement Bureau
Federal Communications Commission
c/o NATEK
9300 East Hampton Drive
Capitol Heights, Maryland 20743

Re: EB-04-1H-0140
Facility ID No. 24436

Dear Mr. Scheible:

Given Dominion Video Satellite, Inc.'s ("Dominion") letter of July 9, 2004, in which it fully responded to the Word of God Fellowship, Inc. d/b/a Daystar Television Network's ("Daystar") letter dated Jun 28, 2004, Dominion believes only a few comments are now necessary on Daystar's letter dated August 12, 2004.¹ The most recent Daystar letter serves to confirm further that Daystar operates its noncommercial educational broadcast stations in violation of the Communications Act and the Commission's rules.²

Dominion has set forth extensive documentation to the Commission in support of Dominion's charge that Daystar operates its noncommercial stations in a

¹ The Daystar letter was received by Dominion's counsel on August 13, 2004.

² Daystar has submitted a copy of a letter from the NRB which has no bearing on the NRB letters earlier submitted by Dominion. Daystar's letter addresses the process for a NRB proceeding and in no way addresses nor contradicts the letters submitted by Dominion which address Daystar's CEO and President Marcus Lamb's statements under oath.

commercial manner. Dominion has presented tapes of programs broadcast on Daystar, rate cards for programming on Daystar, statements of individuals, including Daystar principals, in further support of Dominion's charge. The latest response by Daystar to the Bureau of Enforcement's letter serves to confirm the material previously submitted by Dominion. Although Daystar seeks in its responses to twist its commercial activities into a noncommercial mold, it fails in its attempt to change the character of its operations. Dominion will provide a few short comments on quotes taken from Daystar's August 12 letter.

Dominion Comments on Daystar quotes

1. "Dr. Broer donated all of the proceeds to DTN as well as other worthwhile non-profit activities."

Dr. Broer's affidavit states that, from the proceeds, he deducted the cost of goods sold, administration and handling fees without disclosing the items included within those deductions. Moreover, the initial presentation of this program had Daystar viewers call the for-profit entity directly, and in the second play of the program, Daystar's operators took the calls and covered Dr. Broer's telephone number with Daystar's telephone number.

2. "The Dr. Mike Murdock's program is sponsored by DTN."

Dr. Murdock entered into a "Television Confirmation/Contract" with Daystar. The contract specifies particular times for each program and prices for each time segment. The contract is identified as a "barter/trade agreement." On his program, Dr. Murdock is not engaged in raising funds for the licensee, but rather engages in the direct solicitation of funds for his own ministry, in violation of the non-commercial rules.

3. Pastor Paula White's ministry, Without Walls International Church, has a "Contract" with Daystar. The contract spells out fully the air time to be made available by Daystar for Pastor Paula White and the cost for each segment tied to market coverage. Attached to the contract are the "Daystar Television Network Conditions." These conditions include Payment and Billing and all other terms of a normal commercial contract. The General conditions include a reference to gross rates and the Rates and Changes conditions permits an increase in rates tied to an increase in coverage. In normal experience with noncommercial stations one does not see donation agreements in this form, and if the Paula White arrangement is a "donation" it is certainly a novel way of committing the donor to fulfill her pledge. Additionally, Paula White's program clearly engages in the overt sale of for-profit products on Daystar's noncommercial stations, which is clearly in violation of the Commission's rules.

- 4 "DTN wants the record to be factually correct on the status of Dr. Saxion's organization."

Dr. Saxion may have a non-profit organization, but she has not denied that she has a for-profit organization as Dominion stated. Moreover, the exhibits submitted by Dominion confirm that Dr. Saxion sells the products featured on the Daystar produced "Celebration" program through her for-profit company. It is immaterial to this proceeding that Dr. Saxion also has a non-profit organization.

Request for Confidentiality.

Daystar has submitted two PIO contracts, one for EchoStar and one for DirecTV, under a request for confidentiality. Since the PIO agreement with EchoStar is a matter of public record as shown below, Daystar has waived its right to confidentiality. Further there is no reason to provide confidentiality to the Daystar PIO agreement with DirecTV. However, should such confidentiality be provided to the DirecTV PIO agreement, Dominion believes that it should be permitted to examine that agreement and hereby requests such an examination. Similarly, should there be any amendment to the EchoStar PIO agreement, Dominion should be permitted to examine such changes.

The Commission should be aware that Daystar previously made its PIO contract with EchoStar a matter of public record in the United States District Court for the District of Colorado, Civil Action 03-K-0607, as an attachment to a Declaration of Marcus Lamb, which was signed by Marcus Lamb on May 23, 2003 and voluntarily submitted to the court by Mr. Lamb. Further, the Commission is undoubtedly aware that Daystar's PIO agreement with EchoStar was submitted to the Commission by Dominion as Exhibit 2 to its letter of May 31, 2004 addressed to William D. Freedman.

Daystar's Procedure for Final Determination on Program Acceptance.

Lastly, Daystar has previously submitted its policies for airing noncommercial educational programming. The key statement on the commercial nature of the station's programming is set forth in the affidavit of Janice E. Smith, Vice President of Programming. Ms. Smith states that, after she approves a program, the evaluation is sent to the National Sales Office for final approval. Hence, the final criteria in accepting a program for broadcast is not the public interest, as determined by the programming

department, but rather commercial considerations as determined by the national sales department.

Sincerely yours,

A handwritten signature in cursive script, reading "Marvin Rosenberg".

Marvin Rosenberg
Counsel for
Dominion Video Satellite Systems, Inc.

Cc: Robert L. Olender, Esq.
Pantelis Michalopoulos, Esq.
W. Kenneth Ferree, Esq.
Rosalee Chiara
Robert Johnson

2190595_v1